



CHARLIE CRIST
GOVERNOR

ANDREW C. AGWUNOBI, M.D.
SECRETARY

February 18, 2008

Henry A. Waxman
Chairman
Committee on Oversight
and Government Reform
Congress of the United States
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman Waxman:

Enclosed please find information in response to your correspondence of January 16, 2008, in which you request Florida Medicaid's analysis of the impact of six regulations proposed by the Centers for Medicare and Medicaid Services, including CMS 2258-FC (cost limits on public providers); CMS 2279-P (payment for graduate medical education); CMS 2213-P (payment for hospital outpatient services); CMS 2275-P (provider taxes); CMS 2261-P (coverage of rehabilitative services) and CMS 2287-P (payments for costs of school administrative and transportation services).

If you have any questions regarding the enclosed documents or need any additional information, please feel free to contact Kristin Sokoloski in my office at (850) 413-9070.

Sincerely,

Carlton D. Snipes
Acting Deputy Secretary for Medicaid

CDS/ks
Enclosure

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FAX

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Chairman
Committee on Oversight and
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Date: 2/18/08
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Proposed Rule CMS-2258-FC, Medicaid Program: Cost Limit for Providers Operated by Units of Government and Provisions to Ensure the Integrity of Federal-State Financial Partnership

The federal Centers for Medicare and Medicaid Services (CMS) issued Final Rule CMS-2258-FC, on May 29, 2007. The final rule has established new regulations for governmentally- operated providers. The final rule adds new language to §433.50 to define a unit of government to conform to the provisions of section 1903(w)(7)(G) of the Social Security Act.

Section 1903(w)(7)(G) of the Social Security Act identifies the four types of local entities that, in addition to the State, are considered a unit of government: a city, a county, a special purpose district, or other governmental units in the State. The provisions of this final regulation seek to add new language to §433.50 to define a unit of government to conform to the provisions of section 1903(w)(7)(G). The Agency for Health Care Administration's use of the "Tool to Evaluate the Governmental Status of Health Care Providers" as an instrument to define and classify a healthcare provider as one of the unit of government categories appears in some instances to result in indefinite determinations.

Collection of Information Requirements:

We would propose further refinements to the "Tool to Evaluate the Governmental Status of Health Care Providers" in order for the classifications that result from its use to be as accurate as possible for all parties involved.

Furthermore, according the final rule published on May 29, 2007, the rule states

"...Based on comments received, this tool has been modified to guide States in applying the statutory and regulatory criteria to make the initial determination of a health care provider's governmental status and to create a record supporting this determination relative to each governmentally operated health care provider in the State."

The State is unable to locate the revised version of this tool and the CMS website identifies the form as CMS-10176 and has not updated the form since January 18, 2007.

Based on the manner in which Florida reimburses providers operated by units of government, this rule has no impact on payment to these providers. Florida does not pay these providers more than the cost of providing services.

Proposed Rule-2279-P: Payment for Graduate Medical Education

The federal Centers for Medicare and Medicaid Services (CMS) issued Proposed Rule CMS-2279-P, on May 23, 2007. The proposed rule would modify Part 447.201, Code of Federal Regulations (CFR), to include section (c) as follows:

The plan must not include payments for graduate medical education to any provider or institution or include costs of graduate medical education as an allowable cost under any cost-based payment system (including costs or payments claimed as administrative costs).

Florida reimburses Medicaid hospital providers based on a cost based system, which includes Graduate Medical Education (GME) and Indirect Medical Education (IME). There are thirty-four (34) Florida Medicaid participating hospitals that have GME costs. The estimated total computable impact of removing both GME and IME costs from the Medicaid reimbursement rate for these providers is \$75 million, of which \$44 million is federal funds. The State seeks clarification regarding whether both GME and IME costs are to be removed or GME only.

In addition, Florida reimburses providers through a series of Medicaid Disproportionate Share Hospital (DSH) programs. It is unclear whether the Medicaid DSH program will be affected by CMS-2279-P. To the extent that DSH payments go to hospitals with GME costs, there could be a fiscal impact if the DSH program is included with CMS-2279-P. The total DSH payments to hospitals that have GME costs is \$174 million. Of the total computable, \$102 million represents federal funds. The DSH calculations are not based on GME or IME costs, but are distributed to hospitals which currently have GME costs. One of the DSH programs is specific to teaching hospitals. The methodology for distributing the funds in the teaching hospital DSH program is based on the number of interns and residents, not costs. The state seeks clarification as to whether CMS-2279-P impacts DSH program payments.

Estimated Fiscal Impact CMS-2279-P	State Share	Federal Share	Total Computable
Cost Reimbursement (GME & IME)	\$30,922,122	\$44,076,961	\$74,999,083
DSH – Pending Clarification of the proposed rule on DSH			
DSH	\$71,843,119	\$102,364,250	\$174,207,369

The fiscal impacts provided above are based on State Fiscal Year 2006-07 total computable expenditures.

The same level of expenditures would be expected to continue over a five year period.

**CMS-2213-P: Clarification of Outpatient Clinic and
Hospital Facility Services Definition and Upper Payment Limit**

This proposed rule reduces reimbursements for outpatient hospital and clinic services and redefines what is eligible for reimbursement. This relates to Upper Payment Limit (UPL) scenarios. Florida eliminated its UPL program as part of transition to the Low Income Pool program as part of the 1115 Medicaid reform waiver. For this reason, Florida offered no comments on this proposed rule. There is no potential fiscal impact on Florida resulting from this proposed rule.

CMS-2275-P: Health Care-Related Taxes

This proposed rule redefines permissible health care provider taxes. The proposed CMS rule seeks to lower the acceptable tax threshold from 6.5% to 6%. Florida's only provider assessments are imposed under the Public Medical Assistance Trust Fund, and those assessments on net revenues are 1.5% for inpatient hospital services and 1.0% for outpatient hospital services (s. 395.701, F.S.). Because Florida's assessments are significantly below the proposed threshold, we chose not to comment on the proposed rule. There is no potential fiscal impact on Florida resulting from this proposed rule.

Federal CMS Proposed Rule-CMS-2261-P

The federal Centers for Medicare and Medicaid Services (CMS) issued Proposed Rule CMS 2261-P, on August 13, 2007. The proposed rule would modify 42 CFR Part 440.130 and Part 441 Subpart A, General Provisions, by adding a new section 441.45, Rehabilitative Services. Provisions with potential fiscal impact to Florida's Medicaid program, if implemented, are discussed below.

1. Section 440.130 (d)(iii) adds a definition of Qualified providers of rehabilitative services that states they have to have the same qualifications as required under federal law and state practice law. Under current practice laws in Florida, employees of mental health centers, primary providers of behavioral health rehabilitative services, are exempt from licensure. Our Medicaid policy allows non-licensed staff to provide rehabilitative services. If CMS does not accept our State's exemptions, fees for clinical therapy services would increase, with an estimated total additional cost of \$7,259,370 annually. The Federal Financial Participation (FFP) portion would be \$4,125,500 annually.
2. Section 441.45(b)(1) denies coverage of rehabilitative services if they are intrinsic elements of other programs.
 - A. Florida Medicaid currently funds rehabilitative mental health and substance abuse services to children in community-based juvenile justice and child welfare settings. The rule does not define the term "intrinsic element." If CMS determines that these services are intrinsic to these respective programs and therefore their responsibility to fund, it would cost Florida a total of \$29,225,793 in funded services. The FFP portion would be \$16,609,018.
 - B. The Medicaid Early Intervention Services (EIS) program reimburses providers for performing services in a school setting as outlined in the Individuals with Disabilities Education Act (IDEA), Part C. As a result, proposed rule 2261 may lead to a reduction in the amount of Medicaid federal financial participation (FFP) available for these services. However, since IDEA mandates that its funding be used as the payer of last resort, this proposed federal regulation may be in direct opposition to the wording of IDEA, causing a conflict between these two federal regulations. Total expenditures during state fiscal year 2005-2006 were \$1,518,022 (\$893,963 in federal funds and \$624,058 in state funds).
3. Section 441.45(b)(1)(ii) denies coverage under rehabilitative services for packaged therapeutic foster care services and requires each component part be separately billed, which undermines the program's viability and effectiveness. Therapeutic foster care is the least restrictive, least costly mental health residential treatment service. If therapeutic foster care, as currently provided, were not available, children would require placement in an institutional setting at the additional cost of \$78,728,673 to the state of Florida annually. The FFP portion of this cost would be \$44,741,505 annually.
4. Section 441.45 (b)(2) defines services which are "habilitative" rather than "rehabilitative" in nature. Services provided through the Medicaid Certified School Match program are often to assist Medicaid eligible students in maintaining a level of function. As a result, there are many students who will continually receive services. The proposed rule addresses those who require services exceeding a year as habilitative services. Similarly, recipients enrolled in the Early Intervention Services program are attempting to gain skills to help them reach their optimal level of functioning, rather than aiding them in regaining lost functions. It is possible that this program will be seen as habilitative rather than rehabilitative in nature. CMS has not prohibited payment for habilitative services.
5. Section 441.45(b)(4) prohibits coverage of rehabilitative services if they are delivered to individuals who are in a setting over which a governmental agency exercises administrative control. Privately contracted residential non-secure commitment programs enroll as community behavioral health providers under Medicaid to provide behavioral health services to youth in their settings. If CMS, under this rule, determines that these contracted private providers are under the administrative control of or, as the preamble states, under the domain of the Department of Juvenile Justice, these

expenditures would be disallowed as these programs would fall under the definition of a public institution. The cost associated with this provision would be \$18,158,634 to the state of Florida annually. The loss of FFP to the State would be \$10,319,552.

Fiscal Impact:

The estimated fiscal impact of this proposed rule for Fiscal Year 2008-2009 is below.

Rule Provision	Total	FFP	State
1. Staff Qualifications	\$7,259,370	\$4,125,500	\$3,133,870
2. Intrinsic elements			
A. Rehabilitation Services/ DJJ	\$29,225,793	\$16,609,018	\$12,616,775
B. Early Intervention Services	1,518,022	\$893,963	\$624,058
3. Therapeutic Foster Care	\$78,728,673	\$44,741,505	\$33,987,168
4. Definition of Under Administrative Control	\$18,158,634	\$10,319,552	\$7,839,082
5. Habilitation	Indeterminate	Indeterminate	Indeterminate
Total Estimated Fiscal Impact	\$134,890,492	\$76,689,538	\$58,200,953

The same level of expenditures would be expected to continue over the next five years.

CMS-2287-P; Payment of Costs of School Administrative and Transportation Services

The federal Centers for Medicare and Medicaid Services (CMS) issued Final Rule CMS 2287-F on December 21, 2007. The final rule will eliminate the School District Administrative Claiming Program.

In January 1, 1998, the Florida School District Administrative Claiming (SDAC) program was implemented. The Agency for Health Care Administration (AHCA), the Florida Department of Education (DOE) and individual school districts have shared in the responsibility of promoting access to health care for students in the public school system, preventing costly or long term health care problems for at risk students, and coordinating students' health care needs with other providers. Many of the activities performed by school district staff met the criteria for Medicaid administrative claiming. The primary purpose of the Medicaid SDAC program is to reimburse school districts for Medicaid outreach activities conducted on a daily basis.

The program allows school districts to be reimbursed for a portion of their costs associated with school based health and outreach activities, as permitted under previous federal CMS interpretations and regulations.

This proposed rule change will result in the loss of Title XIX revenue for the sixty-five participating school districts (of Florida's 67 school districts). The school districts will no longer be permitted to receive reimbursement for school based health and outreach activities unless performed by employees of the State or local Medicaid agencies. This will impact the following school districts services:

- care planning;
- service coordination;
- monitoring of health services;
- referrals; and
- Medicaid eligibility determinations.

The proposed rule will also restrict the school districts' ability to receive reimbursement for transportation services when transporting Medicaid recipients between home and school.

In state fiscal year 2006-07, Florida Medicaid made \$56,969,125 in Federal Funds available to school districts under current federal guidelines. Under the proposed rule, this level of funding will be lost, and school districts will need to adjust funds accordingly.

The same level of expenditures would be expected to continue over a five year period.
